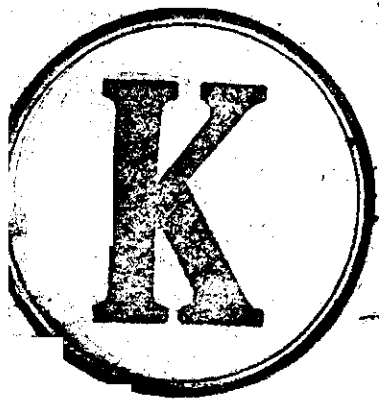




1952.

File No. ^{Prov. Munis.}
Corp. II/52
Legal Dept. (R)

B

BRANCH

P.15(E)

Subject:— Rules under the
Bombay Provincial Municipal
Corporations Act 1949

File No. ^{Prov. Munis.} Corp. II/52
(R)

Gen. 104 e.

233-B

Legal Department.

Subject to the following remarks, the draft amendments proposed by the Ahmedabad Municipal Corporation at pages 3 to 7 ante are free from any legal objection.

Draft rule 12(2).- In clause (b) the words "on conviction, be punished" should be substituted as shown at page 3 ante.

Clause (c) which is inconsistent with section 428 of the Bombay Provincial Municipal Corporations Act, 1949, should be deleted.

Draft rule 12(3).- Same remarks as above.

Draft amendment to rule 21.- It may be recast as follows, namely :-

"Before a ballot paper is delivered to any elector, the polling officer shall cause a mark to be put on the first finger of the left hand of such elector with an indelible ink."

Id/-J.R.D.29/1
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 1407 , dated the 29th
January 1952.

BKS. 2/7/ 4c.

AK
10/7

Legal Department.

Section 8 of the Act provides for the qualifications of the voters. Clause (c) of sub-section (1) of section 8 of the Act provides that every person who has the requisite residence, business premises or taxation qualification shall be entitled to be enrolled in such roll as a voter of such ward. Rule 1 of the Election Rules in Chapter I of the Schedule to the Act relates to the preparation and revision of list of persons qualified to vote. Proviso to sub-rule (3) of Rule 1 provides that where such person is -

- (1) a company, the name of any individual member of such company authorised in that behalf,
- (2) a firm, the names of all the partners of such firm registered under the Indian Partnership Act, 1932,
- (3) any other association or body of individuals, the *individual member of such association or body of* name of the individuals authorised by such association or body of individuals, or
- (4) an undivided Hindu family possessing the requisite premises or taxation qualification, the name of all adult co-parceners of the family,

shall be entered in such lists against the name of such company, firm, association, body of individuals or family, as the case may be .

Sub-rule (12) of rule 1 provides for a choice to a voter to choose in which ward his name should be entered if his name is entered in more than one ward list. Sub-rule (21) of rule 1 gives the power to the Commissioner not to retain name of one person in more than one ward list and sub-rule (22) of rule 1 further provides that the Commissioner shall not enter the name of any individual more than once in any ward list, even though he is entitled to in his various capacities to have his name entered more than ~~one~~ once in the same ward. Rule 1 has thus provided for not entering the name of the same voter in the same ward or in different wards more than once. It may, however, happen that the person's

name may appear twice in the same ward or in different wards after the final roll is published, and on the strength of such entry he may attempt to vote more than once. That the person is not entitled to vote more than once in the same ward or in different wards even though his name appears twice in the roll, is made clear in rule 24 where it is specifically stated that if he has already voted in any by-election at the same ward, he is not to be given a ballot paper. It is also specifically provided that if at a general election he has voted in any other ward he is not to be given a ballot paper. The effect of all these provisions is that a person is entitled to vote only once whether at a by-election or a general election. The proviso to rule 24A suggested by the Municipal Commissioner, Poona, is, therefore, unnecessary.

2. The other draft amendments to the Rules may be sanctioned by Government subject to the modifications suggested at pages 3 to 6 ante. It is not necessary to return the draft Rules to the Corporation for the purpose of carrying out the modifications nor is it necessary to publish the modifications for inviting objections and suggestions.

Id/-J.R.D. 9/2
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 2128 dated the 9th February 1952.

BKS.
2/7/
4c.

Legal Department.

It would not be legal to sanction the rules with the modifications shown in the proposed Government Resolution at page 151 and 153 ante in view of the defects pointed out in the opening paras of the Additional Secretary's U.R. No. 1588 dated the 31st January 1952. In paragraph 5 of the Local Self Government and Public Health Department note dated 24th October 1951 it is stated that quite a number of provisions, like rule 5, clause (a) of rule 6, rule 7, rule 8 and clauses (a), (b), (c) and (d) of section (A) of rule 10 are merely reproductions of the rules in Chapter VIII of the Schedule to the Act. That Department, therefore, took the view that it would be desirable if the Corporation at the same time repeals the corresponding rules so that there should be no confusion or contradictions. It was, therefore, advised in the Legal Department opinion that it is necessary to specify in the rules that the rules now proposed by the Ahmedabad Corporation are the rules in supersession of those contained in Chapter VIII of the Schedule to the Act in so far as they relate to octroi. Until this is ~~done~~ done, legally there would exist two sets of rules regarding octroi and it would be difficult to administer them. The sanction of Government should not therefore be given at this stage until the Corporation amends the rules in the manner now indicated. The following observations are also made on the other points referred to the Legal Department.

Para. 3 of L.S.G. & P.H.D. note at p. 145 .- A Market Committee ~~examined~~ constituted under the Bombay Agricultural Produce Markets Act, 1939, is a local authority (cf. the definition of local authority as defined in section 3(26) of the Bombay General Clauses Act, 1904 and sections 7 and 13 of the Act. If therefore the definition of 'local authority' is adopted as advised in the Additional Secretary's opinion referred to above the definition will include

such Market Committees.

Para. 8 of L.S.G. & P.H.D. note at p. 147 .- the Local Self Government and Public Health Department proposes (vide para. 11 at p. 105) to delete the words "or in any other form approved by the Standing Committee" on the ground that the Schedule is a part of the rule and the power should not be given to the Standing Committee to alter the form of requisition. If the intention is that the Standing Committee should prescribe the form then the rule in question should not prescribe any form at all but should leave such form to be prescribed by the Standing Committee. But if the form *under rule 9 then the power should not be given to the Standing* is intended to be prescribed/Committee to approve any other form in place of the form prescribed under rule 9. It is for the Local Self Government and Public Health Department to decide which is the more suitable amendment.

Id/-J.R.D. 2/3
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 3440, dated the 3rd March 1952.

BKS.

2/7/

4c.

Legal Department.

The rules and by-laws framed by local bodies are not usually scrutinised or revised by the R.L.A. The R.L.A. shall, however, be glad to give advice on any legal point which may arise in connection with such rules and by-laws. However, the following remarks are made on the standing Orders framed by the Poona Municipal Corporation.

2. In the draft Standing Orders, in quoting the relevant rules of the octroi rules, a distinction is made between the rules as appear under Chapter VIII in the Schedule to the Act and the rules as proposed to be framed in the linked file. To distinguish these two sets of rules wherever the reference is made to the rules in Chapter VIII they are qualified as "(Original)" at various places in the draft Standing Orders. To remove this confusion it is better that the rules which are proposed to be made in the linked file and the rules in Chapter VIII which are proposed to be retained should be embodied together, and published under sections 454 and 455 of the Act.

3. From the preamble to the draft Standing Orders, it appears that it is intended to make Standing Orders in respect of all the matters specified in sub-clauses (a) to (g) of clause (A) of sub-section (1) of section 466 of the Act. Sub-clause (a) requires the prescription of nakas for the collection of octroi. In the draft Standing Orders no such nakas appear to have been prescribed. It would be necessary to prescribe nakas in the Standing Orders.

4. Draft Standing Order No.7.- This Standing Order is not in order. Under rule 29 in Chapter VIII of the Schedule to the Act if an ~~importer~~ importer, when so required to do, is bound to produce the original invoice, bill etc. for inspection. To this extent rule 29 covers this draft standing order. In Rules 33, 42 and 49 in the said Chapter provide for a demand for payment of octroi and the mode of recovery. If any specific provision for requiring the importer to pay the difference

of duty in case of under-payment, is to be made, it should be made in the rules. Such a provision in the Standing Order would not be in order.

5. Draft Standing Order 15.- The word "export" appearing at the bottom is a mistake for the word "import".
6. Draft Standing Order 16.- This Standing Order would not be legally feasible. Such a wide power cannot be taken by the Commissioner under a Standing Order.
7. Draft Standing Order No.17.- This Standing Order is not in order as it is inconsistent with the provisions of clause (d) of sub-section (1) of section 466. Whatever provisions as regards stamping, sealing or marking of imported goods are to be made, they should be made in the standing orders themselves. The Commissioner cannot take power by a standing order to make an order regulating the stamping etc. of imported goods. The view taken by the L.S.G. & P.H.D. is correct.
8. Draft Standing Order 18.- The suggestion proposed to be made by the L.S.G. & P.H.D. for inserting "agent" is in order. In that case it would be necessary to amend accordingly draft standing order 22 and Form D.
9. Draft Standing Order 20.- The view taken by the L.S.G. & P.H.D. is not correct. The Standing Order is intended where a claim for refund is made by the exporter himself.
10. Draft Standing Order 21.- There is no objection to making a suggestion as proposed by the L.S.G. & P.H.D.
11. Draft Standing Order 23.- This provides for the issue of duplicate certificate or note or bill on payment of a fee. The Standing Order would be outside the scope of *Section 466. A provision for copying fees can be made* under by-laws to be made under clause (45) of section 458.
12. Draft Standing Order 25.- ~~Clauses (4) and (5)~~ ^{(4) and (5)} - It cannot be left to the Commissioner to prescribe the escort fees and warehouse fees referred to in clause (4) and (5). Section 466(1)(A) requires that supervision fees should be prescribed in the Standing Orders themselves. In clause (10) the word "intends" is a mistake. It should

be "intents". Clause (12) is unobjectionable so far as it provides for recovery of octroi rule 49 in Chapter VIII of the Schedule to the Act. If any provision prescribing different mode of recovery is to be made, it should be made in the rules and not by a Standing Order.

13. The penal provision beginning with "whoever commits" appearing below Standing Order 28 should be separately numbered.

Id/-J.R.D. 4/3
Additional Secretary to Government.

U.R. to L.S.G. and P.H.D., No. 3521, dated the 6th March 1952

BKS. 2/7/
4c.

Legal Department. .

The Rules and by-laws framed by local bodies are not usually scrutinized or revised by the R.L.A. The R.L.A. shall, however, be glad to give advice on any legal point which may arise in connection with such rules and by-laws. However, the following remarks are made on the octroi rules framed by the Poona Municipal Corporation.

2. The preamble to the rules as drafted by the Corporation is defective. Chapter VIII in the Schedule to the Act relates to taxation rules and rules 26 to 29 in that Chapter deal particularly with the special provisions relating to octroi and tolls. Rule 62 in the said Chapter VIII also related to refund of octroi and tolls. It is, therefore, necessary to specify in the preamble that rule 62 in so far as it relates to octroi has only been superseded by the proposed new rule. The intention of the Poona Municipal Corporation appears to be to add new rules in addition to the existing rules 26, 28, 29, 33, 35 and 49 in Chapter VIII of the Schedule to the Act. Under this scheme, some of the rules relating to octroi will have to be read from Chapter VIII in the Schedule to the Act and some will have to be read from the notification which is now being issued under section 454 of the Act. In order that all the rules regarding octroi should be at the same place the better plan would be to supersede all the existing rules contained in Chapter VIII in Schedule to the Act in so far as they relate to octroi and to make a fresh set of rules which will take the place of the existing rules. Under this scheme the device used in the linked file relating to Standing Orders that the rules contained in Chapter VIII should be called as "original" rules and the rules now proposed to be added should be called supplementary rules would be no longer necessary and the people concerned with the rules also will know what the rules are on the

subject.

3. Draft rule 1.- Reference to "Provincial Government" is not in order. It should be "Government of Bombay".

4. Draft rule 2(f).- Draft rule 2(f) attempts to define "public authority". The expression "local authority" has been defined in section 3(26) of the Bombay General Clauses Act, 1904. Perhaps the Corporation wants to define the expression "local authority" and not "public authority". It may be defined on the lines of section 3(26) of the Bombay General Clauses Act, 1904, as follows, namely :-

" 'local authority' shall mean a municipal corporation, municipality, local board, body of port trustees or commissioner or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."

This definition will serve the purpose. It is not necessary to include Government in the expression "local authority" as section 146 of the Act provides for exemption in respect of articles imported by Government.

5. Draft rule 2 3.- If no agreement has been so far entered into for the inclusion of the area of the Poona and Kirkee cantonments within the limits of the Corporation, the octroi limits should not include that area. The view taken by the L.S.G. & P.H.D. is correct.

6. Draft rule 5(3).- A general provision authorising the Standing Committee to grant exemptions would be inconsistent with the provisions of section 149. It would be necessary to specify in the rule the articles to be exempted from octroi; The power of prescribing conditions cannot be left with the Commissioner.

7. Draft rule 7.-This rule is in substitution of rule 62 in Chapter VIII in the Schedule to the Act. As worded it empowers the Standing Committee to grant refund in the case of any particular industries it might choose. The rule is likely to be challenged on the ground that it invests the Standing Committee with power to make discrimination without

any guiding factor. The proper course would be to invest the Standing Committee with power to grant refund of 50% of the tax in respect of a class of industries having common characteristics.

8. Draft rule 8.- This rule provides that the requisition to be issued by the Commissioner to importer may be in form "1" or in any other form approved by the Standing Committee. In this connection attention is invited to the suggestion made in L.D., U.R. No. 3440 dated 3-3-1952 in respect of a similar provision in Octroi Rules of the Ahmedabad Municipal Corporation. If the intention is that the Standing Committee should prescribe the form then no form should be prescribed in the rule at all but such form may be left to the Standing Committee to prescribe. But if the form is intended to be prescribed then the power should not be given to the Standing Committee to approve any other form in place of the form prescribed.

9. Draft rule 10.- In this rule for the word "to seize" the word "to inspect" should be substituted, Under section 387 of the Act, the Commissioner would then get power to enter the premises and inspect the accounts.

Id/-J.R.D. 5/3
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 3522 ,dated the 4th March
1952.

BKS.
2/7/
4c.

Legal Department.

The rules and bye-laws framed by local bodies are not usually scrutinized or revised by the R.L.A. The R.L.A. shall, however, be glad to give advice on any legal point which may arise in connection with such rules and bye-laws. However, the following remarks are made on the Octroi Rules framed by the Ahmedabad Municipal Corporation.

The preamble to the Rules as drafted by the Ahmedabad Municipal Corporation is defective. Chapter VIII in the Schedule to the Act relates to taxation rules and rules 26 to 29 in that Chapter deal particularly with the special provisions relating to Octroi and tolls. Rule 62 in the said Chapter VIII also relates to refund of octroi or tolls and rule 33 provides that octroi shall be payable on demand. It is therefore necessary to specify in the preamble that the rules now proposed by the Ahmedabad Municipal Corporation are the rules in supersession of those contained in Chapter VIII in the Schedule to the Act in so far as they relate to octroi. In that case it would be necessary also to reproduce some of the rules in the said Chapter VIII which relate to the octroi and which, as pointed out in paragraph 5 of the Local Self Government and Public Health Department note, have not been included in these rules. Subject to what is stated above, the following observations are made on the rules forwarded by the Local Self Government and Public Health Department. :-

Draft rule 2(e) - This clause attempts to define "public authority".

The expression "local authority" has been defined in section 3(26) of the Bombay General Clauses Act, 1904. Perhaps the Corporation wants to define the expression "local authority" and not "public authority". It may be defined on the lines of section 3(26) of the Bombay General Clauses Act as follows, namely :

"local authority" shall mean a municipal corporation,

municipality, local board, body of port trustees or commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund."

This definition will serve the purpose. It is not necessary to include Government in the expression "local authority" as section 146 of the Act provides for exemption in respect of articles imported by the Government. For the same reasons the expression "Public authority" where it occurs in rule 4(2), 4(11) and 4(20) should be substituted by the expression "local authority".

Rule 3 - There is no objection to amending the rule as suggested in paragraph 4 of Local Self Government and Public Health Department note.

Rule 4(21) - The name "B.B.&C.I. Railway" may be substituted by the name "Western Railway".

Rule 4(25) - Since section 146 provides for exemption of articles imported by Government from octroi it is not necessary to refer to Government in this sub-clause.

Para. 7 of L.S.G. & P.H.D. note - Under paragraph 5 of Appendix IV to the Act the octroi rules made under the Bombay Municipal Boroughs Act in so far as they are not inconsistent with the provisions of this Act continue in force until they are superseded. It is therefore necessary to supersede those rules.

Para. 15 of the L.S.G. & P.H.D. note - The note to the Schedule A prescribing the method of calculating the octroi in certain circumstances can properly be made under section 454 read with section 457 (7)(a) of the Act. The power contained in section 466(1)(a)(c) of the Act is in respect of making standing order for determining how octroi shall be calculated when no reliable evidence is available of the value of the goods imported. The notes under Schedule A in question do not provide for such

calculation and the notes in question can properly be
made under section 454 and section 457(7) of the Act.

Id/-J.R.D. 30/1
Additional Secretary to Government.

U.R. to L.S.C. & P.H.D. No. 1588 , dated the 31st January
1952.

BKS. 277/
4c,

LEGAL DEPARTMENT.

The draft octroi Rules as framed by the Ahmedabad Municipal Corporation partly fall under section 149(1) of the Bombay Provincial Municipal Corporation Act, 1949 and partly fall under section 454 of the said Act read with the provisions of Chapter VIII of the Schedule to the Act.

It is true that under section 149(2) of the Act, the Government has power to sanction with modifications the rules submitted to it by the Corporation but that power would be exercisable in so far as the rules are covered by section 149. From sub-section (1) of section 149, it will appear that the detailed provisions in the form of rules under that section can be made in so far as no provision is made by the Act. As regards matters for which provision is made ⁱⁿ by the Act or in the Schedule to the Act, no provision can be made under section 149. As regards provisions made in the Schedule to the Act, the Corporation has power under section 454 to annul or to make additions or alterations therein. Under section 455 such additions or alterations on rescission are subject to the sanction of Government. The power conferred on Government under section 149(2) differs from the power conferred under section 455 in that under section 455, the Government is not authorised to sanction the additions and alterations with modifications.

As pointed out in para. 1 of the L.D., U.R. No.3440, dated 3rd March 1952, rules 5, 6(a), 7, 8, 10(A)(a)(b)(c)(d) as contained in the draft rules are reproductions of the corresponding rules in Chapter VIII of the Schedule to the Act. This cannot be done unless the corresponding rules in Chapter VIII are rescinded. The rescission of rules from Chapter VIII would attract section 454 of the Act and it is for the Corporation to rescind them under that section. The power which Government has under section 455 is simply to give its sanction to such proposal. Government cannot thereof carry out such modifications in the rules.

Id/-J.R.D. 31/3
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D.No. 4929, dated the 31st March 1952.